

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CRAIG SPURLOCK,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

No. 2:23-cv-00467-JHC

**STIPULATED PROTECTIVE
ORDER**

I. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, this Court enters the following order, in similar form to the Western District's form Stipulated Protective Order. This agreement is consistent with LCR 26(c).

The Protective Order does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle either Party to file confidential information under seal.

1 to a Protective Order, Confidentiality Agreement, Order of a Court, governmental subpoena,
2 regulatory compliance activity, or inadvertent disclosure that was subsequently remedied.

3 3.2 Nothing in this Order shall be construed to prohibit, restrict, or require State Farm
4 to obtain an authorization for the retention, use, or disclosure of nonpublic Confidential
5 Information and records as authorized or as reasonably required by its Information Retention
6 Schedules, federal or state law or regulation, or court order, rule; including but not limited to
7 reporting to or for: Medicare authorities if reporting is applicable; a third-party for analysis of
8 records in anti-fraud efforts (using non-fraudulent data to benchmark); rate-making or otherwise;
9 and retaining reports in paperless electronic claim systems for permissible insurance functions.
10 Nothing in this order shall prevent State Farm from retaining all documents necessary for
11 regulatory compliance activities, nor from producing any documents necessary for regulatory
12 compliance activities.
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16 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

17 4.1 Basic Principles. Named Plaintiff Craig Spurlock may use confidential material
18 that is disclosed or produced by State Farm in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation.

20
21 Confidential material may be disclosed only to the categories of persons and under the
22 conditions described in this agreement. Confidential material must be stored and maintained by a
23 receiving Party at a location and in a secure manner that ensures that access is limited to the
24 persons authorized under this agreement.

25 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
26 by the court or permitted in writing by the designating party, a receiving Party may disclose any
27 confidential material only to:
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1 (a) The receiving Party's counsel of record in this action, as well as employees
2 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

3 (b) The officers, directors, and employees (including in-house counsel) of
4 State Farm to whom disclosure is reasonably necessary for this litigation;

5 (c) Experts and consultants to whom disclosure is reasonably necessary for
6 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
7 A). The Parties must provide signed Acknowledgments from each expert at the time of testimony
8 at deposition or trial, as applicable. *See* Fed. R. Civ. P. 26(a)(2);
9

10 (d) The court, including the court reporters and other court staff and personnel,
11 mediators, arbitrators, jury consultants, or factfinder(s) while in trial;

12 (e) Copy or imaging services retained by counsel to assist in the duplication
13 of confidential material, provided that counsel for the party retaining the copy or imaging service
14 instructs the service not to disclose any confidential material to third parties and to immediately
15 return all originals and copies of any confidential material;

16 (f) During their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
18 (Exhibit A), unless otherwise agreed by the designating Party or ordered by the court. Pages of
19 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
20 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
21 under this Order;

22 (g) The author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information; and
24

1 (h) The Division of Insurance, law enforcement officers, and/or other
2 government agencies, as permitted or required by applicable state and federal law.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or
4 referencing such material in court filings, the filing party shall confer with the designating party
5 in accordance with LCR 5(g)(3)(A), to determine whether the designating party will remove the
6 confidential designation, whether the document can be redacted, or whether a motion to seal or
7 stipulation and proposed order is warranted. During the meet and confer process, the designating
8 Party must identify the basis for sealing the specific confidential information at issue, and the
9 filing party shall include this basis in its motion to seal, along with any objection to sealing the
10 information at issue. LCR 5(g) sets forth the procedures that must be followed and the standards
11 that will be applied when a Party seeks permission from the court to file material under seal. A
12 Party who seeks to maintain the confidentiality of its information must satisfy the requirement of
13 LCR 5(g)(3)(B), even if it is not the Party filing the motion to seal. Failure to satisfy this
14 requirement will result in the motion to seal being denied without prejudice.

18 V. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
20 that designates information or items for protection under this Order must take care to limit any
21 such confidential designation to specific material that qualifies under the appropriate standards.
22 The designating Party must designate for protection only those parts of material, documents,
23 items, or oral or written communications that qualify, so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.
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Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other Parties) may expose the designating Party to sanctions.

If it comes to a designating Party's attention that information or items that it designated for protection do not qualify for protection, the designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this Order must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating Party must affix the word "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the designating Party must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any Party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as

1 confidential. If a Party desires to protect confidential information at trial, the issue should be
2 addressed during the pre-trial conference.

3 (c) Other tangible items: the producing Party must affix in a prominent place
4 on the exterior of the container or containers in which the information or item is stored the word
5 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of
6 the information or item warrant protection, the producing Party, to the extent practicable, shall
7 identify the protected portion(s).
8

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the designating Party’s
11 right to secure protection under this agreement for such material. Upon timely correction of a
12 designation, the receiving Party must make reasonable efforts to ensure that the material is treated
13 in accordance with the provisions of this agreement.
14

15 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating Party’s confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.
22

23 6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
24 regarding confidential designations without court involvement. Any motion regarding
25 confidential designations or for a protective order must include a certification, in the motion or in
26 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
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1 with other affected Parties in an effort to resolve the dispute without court action. The certification
 2 must list the date, manner, and participants to the conference. A good-faith effort to confer
 3 requires a face-to-face meeting or a telephone conference.
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5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 6 intervention, the designating Party may file and serve a motion to retain confidentiality under
 7 LCR 7 (and in compliance with LCR 5(g), if applicable). The burden of persuasion in any such
 8 motion shall be on the designating Party. Frivolous challenges, and those made for an improper
 9 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other Parties) may expose
 10 the challenging Party to sanctions. All Parties shall continue to maintain the material in question
 11 as confidential until the court rules on the challenge.
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13 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN** 14 **OTHER LITIGATION**

15 7.1 If a Party is served with a subpoena or a court order issued in other litigation that
 16 compels disclosure of any information or items designated in this action as “CONFIDENTIAL –
 17 SUBJECT TO PROTECTIVE ORDER,” that Party must:
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19 (a) Promptly notify the designating Party in writing and include a copy of the
 20 subpoena or court order;

21 (b) Promptly notify in writing the Party who caused the subpoena or order to
 22 issue in the other litigation that some or all of the material covered by the subpoena or order is
 23 subject to this Order, and such notification shall include a copy of this Order; and
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1 (c) Cooperate with respect to all reasonable procedures sought to be pursued
2 by the designating Party whose confidential material may be affected.

3 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
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5 8.1 If a receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 confidential material to any person or in any circumstance not authorized under this Order, the
7 receiving Party must immediately (a) notify in writing the designating Party of the unauthorized
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
9 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
10 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A).
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13 8.2 Unauthorized disclosure also exposes that Party to sanctions by this Court to the
14 greatest extent allowed by law, including pursuant to Rule 11.
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16 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 9.1 The inadvertent or unintentional disclosure of confidential information shall not
19 be deemed a waiver in whole or in part of State Farm’s claim of protection pursuant to this
20 Protective Order. Any such inadvertently or unintentionally disclosed information shall be
21 designated as confidential as soon as reasonably practicable after a receiving Party becomes aware
22 of the erroneous disclosure and shall thereafter be treated as such by all receiving persons under
23 the terms of this Order. Upon receipt of the properly designated documents, the receiving Party
24 must return or destroy the non-designated set within three (3) days of being informed of the
25 inadvertent disclosure. If the receiving Party destroys the documents, then the receiving Party
26 must provide written certification of the destruction to the designating party within three (3) days
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1 of receipt of the properly designated documents. In addition, the production or disclosure by either
2 Party of an attorney-client privileged, attorney work-product, or other protected document or
3 information, whether inadvertent or otherwise, shall not be deemed a waiver of the privilege,
4 work product, or other protection or immunity from discovery by the Party in this or any
5 subsequent state or federal proceeding pursuant to Federal Rule of Evidence 502 regardless of the
6 circumstances of disclosure. If any Party becomes aware of the production or disclosure of such
7 protected information, that Party shall provide written notice, to the designating Party, of such
8 production or disclosure within three (3) days after it becomes aware that protected information
9 has been disclosed or produced.
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12 **X. NON-TERMINATION AND RETURN OF DOCUMENTS**

13 10.1 Within sixty (60) days of the final determination of this action, including all
14 appeals, the receiving Party must shred (if paper) or delete (if electronic) all confidential materials
15 themselves, as well as all copies, extracts, notes, reports, memoranda, summaries thereof, or other
16 documents containing such confidential information. Alternatively, the Parties may agree upon
17 appropriate methods of destruction. Additionally, a receiving Party that discloses State Farm's
18 confidentially designated material to experts and consultants shall provide written confirmation
19 that the receiving experts and consultants have returned and/or destroyed all confidential material
20 received (without limitation to the foregoing list of documents) as well as all notes, memoranda,
21 and other materials derived from or in any way revealing information relating to the confidential
22 material.
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25 10.2 Notwithstanding this provision, counsel may retain one archival copy of all
26 documents filed with the court, subject to all requirements of this Order, for a period of seven (7)
27 years after the termination of this action, including all appeals. Counsel's one archival copy is for
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the sole and exclusive purpose of complying with any Rule of Professional Conduct and ethical obligations owed to their respective clients. After such period, all materials that contain confidential information must be shredded (if paper) or deleted (if electronic).

10.3 The confidentiality obligations imposed by this agreement shall remain in effect until the Court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

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Dated this 12th day of December, 2023.

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Attorneys for Plaintiff Craig Spurlock


Dated this 12th day of December, 2023.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing Party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. *See* Fed. R. Evid. 502(d). This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). The provisions of Federal Rule of Evidence 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing Party.

This order resolves the motions at Dkt. ## 19, 24, and 41.

DATED this 12th of December, 2023.



John H. Chun
UNITED STATES DISTRICT JUDGE

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Protective Order that was issued by the
 United States District Court for the Western District of Washington on this _____ day of
 _____, 202__, _____ in the case of *Craig Spurlock v. State Farm Fire & Casualty
 Company*, no. 2:23-cv-00467-JHC. I agree to comply with and to be bound by all the terms of
 this Protective Order and I understand and acknowledge that failure to so comply could expose
 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
 disclose in any manner any information or item that is subject to this Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

Within sixty (60) days of the final determination of this action, I shall provide written
 confirmation to counsel of record for Plaintiff that documents produced by State Farm (or
 disclosing the contents of documents) designated by State Farm as “Confidential” (“Confidential
 Information”) has been shredded (if paper) or deleted (if electronic), including the shredding and
 deletion of all copies, extracts and summaries thereof.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Protective Order,
 even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____